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IMPAIRED DRIVING

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Impaired driving is a problem that has attracted great interest in recent years. There is increasing pressure for legislative and administrative changes to deal with drunk drivers. Most suggested changes are based on the assumption that driving while impaired is a criminal offense and that immediate combative measures are needed.

The purpose of this paper is to provide a summary of a seminar given by the author about suggested legislative measures to deal with impaired driving. The seminar was presented to a Canadian Politics class led by Dr. A. Tupper at the University of Alberta during February 1984. The focus of the presentation was thus legislative measures that would be of interest to young people and to political scientists. This paper maintains the same limitations as referred to above. Following the presentation, there was a twenty minute discussion during which students gave their opinions about impaired driving.

Throughout this paper, the meaning of impaired driving is limited to the effects of alcohol on driving, rather than the effects of other drugs which may cause impairment. In addition, the term Blood Alcohol Concentration, or BAC, is defined as the concentration of alcohol in milligrams per 100 millilitres of blood. This is the figure used in breath and blood tests to determine levels of impairment.

IS IMPAIRED DRIVING A PROBLEM?

There are two ways of looking at impaired drivers: either as criminals or as victims. Impaired drivers can be seen as victims because in our society alcohol consumption and use of a motor vehicle may be seen as an integral part of social acceptability. The location of establishments where alcohol is consumed is almost exclusively accessible by private transportation. As well, public transportation is terminated at times earlier than when the majority of patrons leave drinking establishments. In Canada, impaired driving is largely

condoned at the individual level, but is occasionally severely punished by society. We attempt to punish or rehabilitate people who are caught risking events such as crashes which have a low probability of serious outcomes but the high probability of arriving home safely. On the other hand, choosing taxis and hotel rooms involves certain costs to the individual. In addition, the impaired driver can by viewed as the failure of the Alcohol-Safety Community to create effective solutions to drinking and driving.[1]

The prevalent view of impaired drivers is that they are criminals who create a serious social problem. The magnitude of the problem is not well known. More Canadians were killed between 1977 and 1983 (18,000 of them) in alcohol related accidents than were killed in action during the six years of World War II (17, 682).[2]

Despite the measures that have been used during the past twenty years, the problem has persisted. The statistics have remained amazingly consistent. Approximately 5% of the drivers on the road at night have BACs in excess of the statutory maximum. About 45% of fatally injured drivers have BAC's in excess of .08.[3] The table below clarifies the point that estimates vary little as to how many traffic fatalities are alcohol related. Table One shows statistics for all drivers fatally injured in a Canadian study . It was found that at the minimum, each year between 1973 and 1978, between 33 and 35% of fatally injured drivers were impaired. In another study of fatally injured automobile drivers (not all drivers)from 1973 to 1981, the conservative estimate of impairment was that there was a low of 39.5% and a high of 44.0% of all fatally injured automobile drivers who were impaired. Table Two shows these figures.

With regard to Alberta, the statistics are also amazingly consistent. Between 1978 and 1982, between 8.1 and 8.7% of all collisions involved drivers who had consumed alcohol. During the same period, the percentage of fatally injured impaired drivers increased from 24.9 to 30.4% of all drivers involved in fatal collisions.[4] The table on page 4 shows these statistics.

Source: Traffic Injury Research Foundation of Canada.

Minimum Percent: This is determined by dividing the number of victims found to have a specific BAC by the total number of victims. At least that proportion of all victims were known to have a BAC at the specified level. Minimum percent assumes that the drivers who were not tested had a BAC of zero. Refer to Table 1 and to the "All Drivers" sections of Table 2.

The other estimate is more liberal and should be considered an upper limit. It is determined by dividing the number of victims with a specified BAC by only the number of victims tested for BAC. Refer to the "All Drivers Tested" sections of Table 2.

TABLE 1

MINIMUM PERCENT IMPAIRED
DRIVER FATALITIES
SEVEN PROVINCE AGGREGATES
1973 - 1978

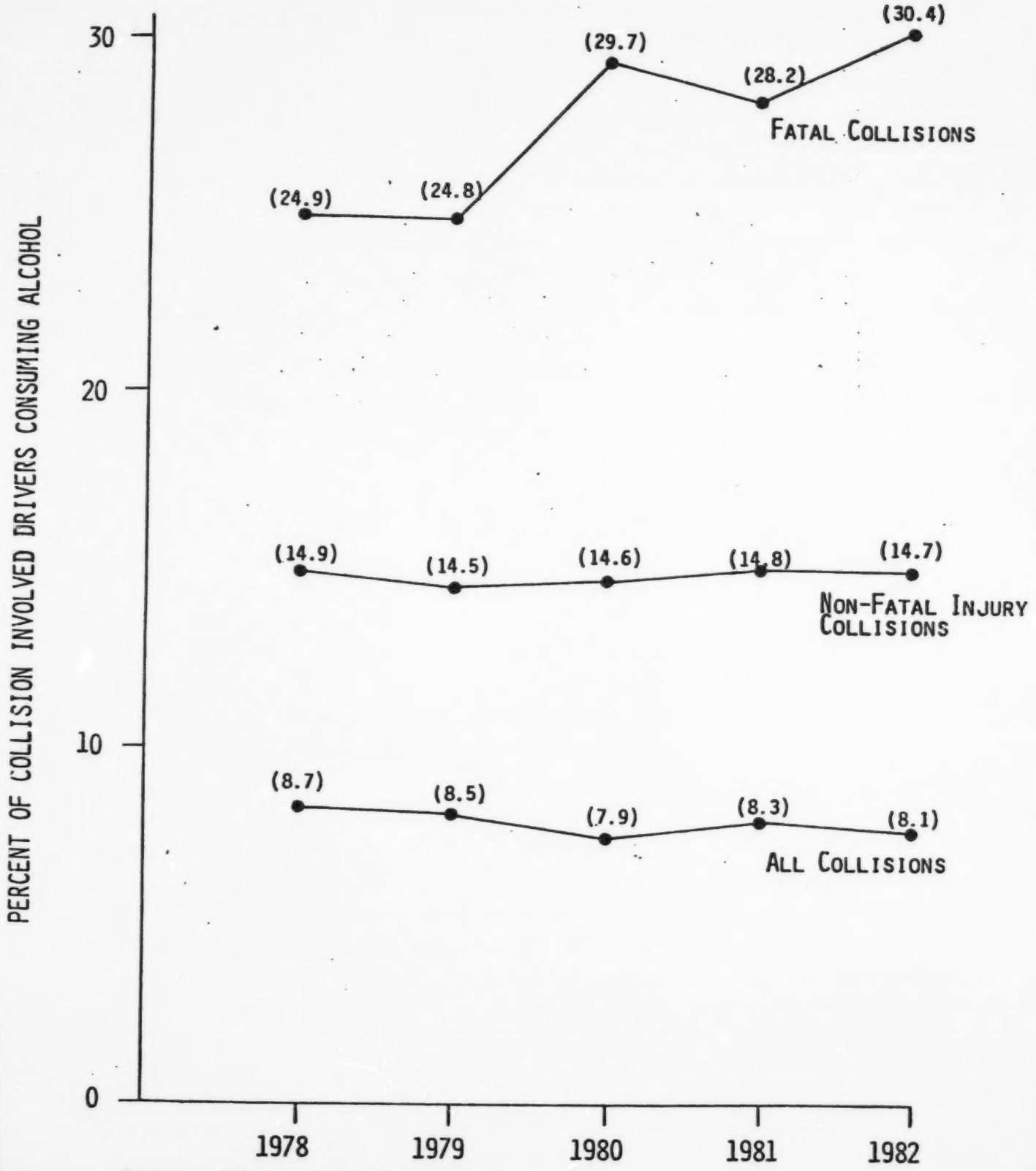
YEAR	NO. OF FATALS	TESTED FOR BAC	MINIMUM PERCENT HBD (BAC > .00)	MINIMUM PERCENT IMPAIRED (BAC > .08)
1973	1951	74.0	41.8	35.1
1974	2121	75.0	41.6	33.1
1975	2034	77.0	44.2	34.4
1976	1804	75.9	43.9	35.0
1977	1848	73.2	41.4	32.6
1978	1681	75.7	41.9	34.3
TOTAL	11,439	75.1	42.5	34.1

TABLE 2

ALCOHOL DETECTED IN FATALLY INJURED
AUTOMOBILE DRIVERS ONLY
(16 AND OLDER, DEATH TIME WITHIN 6 HOURS OF CRASH), SEVEN PROVINCES, 1973 TO 1981

YEAR	AUTO DRIVERS WITH BAC POSITIVE AS A PERCENT OF: ALL DRIVERS	ALL DRIVERS TESTED	AUTO DRIVERS WITH BAC .08 AS A PERCENT OF: ALL DRIVERS	ALL DRIVERS TESTI
1973	52.3	59.4	44.0	50.0
1974	51.5	59.0	41.5	47.5
1975	53.2	59.3	42.1	47.0
1976	51.1	60.3	40.7	48.0
1977	48.0	57.4	39.5	47.2
1978	50.3	58.3	41.6	48.2
1979	48.3	57.2	40.3	47.8
1980	48.7	59.9	40.9	49.3
1981	51.7	59.9	43.7	50.7

PERCENT OF COLLISION INVOLVED DRIVERS CONSUMING ALCOHOL
1978-1982



Source: Alberta Collision Statistics 1982, p.85.

We have legislation regarding impaired driving at both the federal and provincial levels. The relevant sections of the Criminal Code are included in Appendix 1 for your reference. Criminal law is a federal responsibility but the adminstration of justice is a provincial responsibility. Each province or territory has legislation regarding drinking and driving which makes reference to the Criminal Code. Under the Criminal Code, Section 236 states that it is an offense to drive or have the care and control of a motor vehicle when your blood alcohol concentration exceeds 80 milligrams of alcohol per 100 millilitres of blood. Section 234 is the more general clause permitting conviction for driving or having the care and control of a motor vehicle while impaired. It also permits peace officers to demand breath samples from persons suspected of impaired driving. Failure or refusal to comply with demands for a breath sample is an offense with the same penalties as for having a BAC over 80 milligrams.

The Motor Vehicle Administration Act provides for license suspensions of six months for driving while impaired or for being above .08 on the first conviction. Second offenders lose their licenses for a year. Offenders with three or more convictions during the past five years lose their licenses for three years. In addition, under the Liquor Control Act, peace officers may search a vehicle and its occupants for liquor unlawfully kept there (Section 115). Both the liquor and the vehicle may be seized without a search warrant if the Act is breached. Liquor may only be kept in closed containers in the luggage, luggage compartment or in a place out of easy access of the driver.

Impairment differs from being drunk. A person can be impaired at BAC levels below the legal limit of .08. However, even at the limit of .08 you might appear quite sober. Although the legal limit is .08 in Canada and in the United Kingdom, it is .10 in the United States and .05 throughout most of Europe. Appendix 2 lists the Blood Alcohol Concentration for various weights and sexes.

CURRENT PRACTISE

The current practise across Canada is to impose punishments on convicted impaired drivers that is less than what is permitted by law. A possible reason for this is that judges think "There, but for the grace of God, go I", in other words, they realize that getting caught can happen to anyone. In addition, the impaired driver is not usually a hardened criminal. He is frequently in his thirties, married with children and employed full time. Judges hesitate to jail offenders since the person runs the risk of losing his job. This would only add to social costs by increasing the number of foreclosures and people on welfare, for example. Society's best interests may be better served by not jailing generally law-abiding and law-respecting citizens.[5]

Second offenders are frequently tried again as first offenders. In Toronto, no fingerprints or photographs are taken of people arrested for drunk driving. Sometimes the only way to prove a defendant has a record is to locate the arresting officer from the first case to testify. As well, parole rules reduce the 14 day jail term by one third. The remaining 10 days can be served on weekends.[6] In Alberta second offenders are also sometimes tried as first offenders. Unless the Attorney General's department serves the person notice that they will be tried as a repeat offender, they will be tried as first offenders.

In Alberta charges are often laid for both driving while over .08 and for having the care or control of a motor vehicle while impaired. Both charges are laid but normally the person is only convicted of one. Jail terms for first offenders are highly unusual in Canada. In this province, the usual practise is to impose a $300 to $500 fine and a six month license suspension. Completion of the Impaired Driver's Course is required before again receiving a license.

The more serious drunk driving offenses are often prosected under Section 233, criminal negligence because of the heavier penalty of

a maximum five years imprisonment. This contrasts with Sections 234, 234.1, 235 and 236 of the Criminal Code which have six months as the maximum for first offenders.

COMPLEXITY OF THE PROBLEM

It is important to realize when dealing with this subject that there is absolutely no agreement in the field as to which measure or measures will solve the problem. Each group or researcher advocates a different solution for different reasons. In addition, there is little evidence to prove that the countermeasures used thus far, including educational and publicity and technological measures, have been effective. In fact no one knows exactly how many accidents are due to alcohol. We don't know how many people drive with suspended licenses. We don't know how many drivers also drink. In addition, there is no agreement as to why people drive after drinking. There are those drivers who accept drinking and driving as normal behaviour and drivers who believe that alcohol impairs other people's ability to drive but not their own. There are also individuals who believe that they are able to compensate for the effects of alcohol and those who think the risk of driving is justifiable. Of course, there are also those who are so impaired as to prevent any rational thought about the consequences. [7] In fact, do people ever make a conscious decision to drink and drive, or is it just the accepted behavior in our society?

It is important to realize that driver impairment does not constitute a necessary or sufficient precondition for a collision. Impairment does not normally occur alone in accidents. When several factors cooccur such as vehicular defects, weather and road conditions, medical conditions and certain attitudinal and behavioral characteristics, there is a greater likelihood of an accident. [8]

Road accidents involving drunk drivers comprise only about 10 to 15 % of the total number of accidents in a year. [9] Serious accidents due to alcohol remain relatively rare events, and most drinking and driving occasions are associated with favorable outcomes. [10] Perhaps this is one reason why the problems associated with impaired drivers

have remained with us.

Driving after drinking cannot be considered deviant behavior in the usual sense of the term, since it may be common behavior among people in all geographic areas and economic strata.[11] During a 1974 Ministry of Transport study, it was found that 20.4% of nighttime drivers had been drinking (BAC greater than .015) and 4.1% were impaired (BAC greater than .095).[12]

PROPOSED LEGISLATIVE CHANGES

In recent years, there has been a higher profile given by the media to drunk driving and to interest groups lobbying our governments for legislative change. There are literally dozens of suggestions for legislative changes, such as raising the drinking age, raising the driving age, mandatory blood samples, mandatory 48 hour jail terms, license suspensions, vehicle impoundment and compulsory community service. Those who advocate harsher measures believe that harsher punishments will act as a deterrent to others and will dramatically reduce the social costs of impaired driving. There are many interest groups lobbying for change in the province such as People Against Impaired Drivers, the Alberta Motor Association and the Canadian Insurance Bureau. Many interest groups are involved with AADAC on a Task Force to deal with impaired driving.

PAID is concerned that offenders are not punished to the full extent permissable by law. PAID advocates a mandatory 14 day jail term for driving without an operator's license. They support raising the drinking age to 20 years and the driving age to 18 years. They also want a law to make it an offense to lend a motor vehicle to a person who isn't properly licensed to drive.

The Alberta Motor Association calls for lowering the maximum blood alcohol concentration to .05 and supports federal legislation to allow the mandatory taking of blood samples where breath testing cannot be administered.

The Canadian Insurance Bureau contends that mandatory jail terms will not solve the problem. The Bureau suggests that countermeasures such as jail terms, fines and license revocations will not alone be successful. They favor consistent enforcement and swift punishment over

severe punishment. The Bureau advocates individual acceptance of the concept that drinking and driving is unacceptable behavior.

There is a growing demand for legislation to reduce impaired driving among the young, who are overrepresented in alcohol related fatalities. The first suggestion is to raise the drinking age by one to three years. The second suggestion is to raise the driving age to eighteen years. Young drinking drivers are a high risk group for accidents due to their comparative lack of driving experience, and their generally low tolerance of alcohol. Young people are often impaired at levels below .08.

Social activities for the young often involve going to parties or bars outside the home on evenings and weekends. This means that they are exposed to peak periods when alcohol related accidents occur and when all drivers are likely to drive more dangerously.[13]

The relative risk of fatal collision for impaired drivers aged 16 - 17 years is 165 times that for the average non-impaired driver. The impaired driver aged 30 - 34 years is, in contrast, 17 times more likely to be involved in a fatal collision than the average non-impaired driver.[14]

In Alberta in 1982, a higher proportion of collisions involved drivers between the ages of 18 and 20 years who had consumed alcohol than any other group.[15]

The issue of young impaired drivers is becoming especially volatile in the United States, where the Presidential Commission on Drunk Driving has recommended that "States should immediately adopt 21 years as the minimum legal drinking age for all alcoholic beverages."[16] It is estimated that 35% of the 25,000 U.S. citizens killed in 1980 alcohol related accidents were between the ages of 16 and 24 years.[17] Many states have raised the drinking age on the assumption that it will lower the number of accidents and fatalities. They base their legislative changes on studies that show an increase in fatalities in States which lowered the legal drinking age during the 1970's, and on decreased fatalities in States which have raised the drinking age.[18]

One study in Michigan examined the effect of lowering the drinking age to 18 years in 1972 and then raising it to 21 years in 1978. A 31% reduction occurred in alcohol related accidents among 18 to 20 year old drivers during the first year after the drinking age was increased.[19]

There is a lot of controversy as to the validity of these studies. Many of the studies are based on only two years and show no trends. Thus they may ignore normal variations in statistics. In addition, they often lack control groups and leave the possibility that alternative variables could have been responsible for the changes in alcohol related problems. The changes in figures could also be due to altered police reporting practises rather than an actual change in drinking and driving.

In Canada there have been very few studies done of the impact of lowering the drinking age. Two Canadian studies provided confusing evidence. A 1975 study in London, Ontario found that lowering the drinking age was associated with an increase in nonfatal accidents. It is possible, however, that part of the increase was due to altered police reporting habits.[20] A 1977 study of young driver fatalities in Alberta, Saskatchewan, Manitoba and New Brunswick found that the increase in fatalities was not stastically greater than could be predicted by previous trends. However, this study used a small sample size.[21]

There is some political support in Canada for raising the drinking age to 21 years. A GAllup poll conducted in June of 1983 found that 62% of Canadians favor a national law to increase the age to 21 years. In Ontario, where the legal drinking age is 19 years, the support was 69%.[22] There are many interesting political questions regarding raising the drinking age. How much political support actually exists for such a measure? Would any government in Canada take the risk involved? After all, millions of people affected would still be able to vote, even if they couldn't drink. Could any government ignore the wishes of the political constituency safely? In addition, many social activities of young people are integral to our economy. What would be the reaction of bar owners and restaurant owners, who would suffer a loss in revenues?

There are many objections that can be made to raising the drinking age to 21 years. Our society deals with offenders once they have been convicted of a crime. This can be viewed as punishment, deterrence or rehabilitation. Is it right to limit the rights of one group of individuals who have not yet committed an offense but who have been identified as risks? This question can be extended to the risks posed by alcoholics and repeat offenders, as well as the young. Of course, one must also consider whether drinking alcohol is a right or a privilege in Canada.

In addition, is it sensible that an 18 year old could hold public office but could not legally drink alcohol? It is absurd to contend that an individual is responsible enough at 18 years of age to vote, hold office, sign contracts and be responsible for his own behavior, but not to buy or consume alcohol. The notion of a specific age of majority is a useful cultural device which enables preparation and anticipation of becoming responsible for yourself.[23]

An important but usually overlooked aspect of this question is that raising the age unfairly penalizes women. The vast majority of all impaired drivers are men, and this certainly is true of young drivers. In a 1974 national study of 9700 drivers, over a 12 week period it was found that males were twice as likley as females to have been drinking and impaired while driving.[24] Moreover, the mean BAC for men and women drivers did not differ substantially as it was .065 for males and .066 for females. In Alberta in 1982, 85.7 % of the drivers involved in collisions involving alcohol consumption were men.[25] On this basis, would it not be fairer to raise the drinking age to 25 years for men and keep it at 18 years for women?

An additional problem with raising the drinking age is that it ignores the fact that young people are overrepresented in all types of fatal accidents, such as drowning, careless use of firearms and gas poisoning.[26]

DRIVING AGE

The related question of raising the driving age is less controversial. Raising the driving age to 18 years would add to the significance of an age of majority. Exceptions could be made for young people who required

the use of a motor vehicle for transportation to work or to work on a farm. Alternatively, teen driving could be restricted to daylight hours, and restrictions could be placed on the number of passengers drivers under 18 could carry. Driver training could be made compulsory, and the driver's test could include a section on impaired driving.

Another measure to combat drunk driving is blood tests. This is highly controversial since it may constitute a violation of individual rights and thus be unconstitutional. The federal government has introduced amendments to the Criminal Code that include taking blood samples from unconscious drivers under medical supervision. This legislation is supported by the Attorney General of Alberta, Neil Crawford. It is hoped that the amendments will assist in laying criminal charges against people who previously would not have been charged because they were unconscious and unable to provide a breath sample. Blood tests assist in the decision to lay criminal charges against individuals who might be seriously injured themselves.

Is this measure justified in our attempt to deal with drunk driving? The Law Reform Commission of Canada stated in 1983 that any curtailment of equality rights under the charter due to taking blood samples constitutes one of the reasonable limits which in Section One of the Charter"...can be demonstrably justified in a free and democratic society". [27] They argue that taking of blood specimens is a safe and virtually painless procedure and that the direct analysis of blood samples is the best method of determining blood alcohol concentration.[28]

Is the good of society of greater worth than individual rights? Is it right to take blood samples from unconscious victims of accidents? One question that comes to mind is what happens when a person is a hemophiliac?

MANDATORY JAIL TERMS

Of the suggested legislative changes, mandatory 24 or 48 hour jail sentences with the option of 50 to 100 hours of community service is of great interest. In many cases in the United States, combinations of increased fines and license suspensions with mandatory jail sentences have been advocated. In the State of Nevada, for example, 48 hours in

jail or 48 hours of public service is the penalty for first offenders, along with a 90 day license suspension. In Alberta, the Chairman of AADAC, MLA John Gogo advocates mandatory 48 hour jail sentences for first offenders as a deterrent to impaired driving. One disadvantage of such a crackdown is that penalties stiff enough to deter the worst offenders may seem too severe to others. For example, from December 1970 to June 1971 there was a crackdown in Chicago on drunk drivers. The Traffic Court judge imposed a minimum seven days imprisonment and one year license suspensions. However, there was no noticeable decline in Chicago's death rate during this campaign. In 1972 in Phoenix, authorities imposed minimum one day jail sentences. Unfortunately, the courts experienced greater innocent pleas and requests for jury trials, followed by a drop in convictions and a greater number of dismissals.[29]

The problem with mandatory jail terms is that they remove the discretion of the judge to sentence according to individual needs. First offenders who have misjudged their capacity by a single drink should be dealt with differently than repeat offenders and alcoholics. Is it not possible that harsher penalties would have the adverse effect of creating disrespect for the law? After all, thousands of people are convicted annually of impaired driving in Alberta, despite estimates that your chances of getting caught are between 1:500 and 1:2000. Perhaps mandatory jail terms would be an expensive misuse of our resources. What good does it do to place generally law abiding citizens in jail with hardened criminals?

It may be that enforced community service and fines are more appropriate punishments. Community service permits the offender to continue daily activities while making a contribution to society. You do not remove the person from his means of self support and do not incur the phenomenal costs of incarceration. Increased fines would not likely act as a deterrent, but would at least force offenders to pay for some of the costs incurred by impaired drivers. Trying one person for impaired driving averages about $10,000 by the time costs of arrest and prosecution are assessed.

In addition, there is little proof that harsh legislation acts as a deterrent to impaired driving. The certainty of apprehension is a much greater deterrent. Programs such as Checkstops and more consistent law enforcement might be more effective. We already have harsh laws to deal with impaired driving, and there doesn't seem to be much widespread support for imposing those maximum penalties, let alone harsher ones. The courts are already reluctant to jail first offenders: jail terms are imposed in only about 10% of all drunk driving cases, including those involving serious injury or death; and even then the sentences are usually only for a week or two.[30]

Many advocates of harsher legislation believe that the Scandinavian countries have eradicated this problem by harsh penalties. However, there is research to prove that it is a myth that the Scandinavian countries have solved the problem. Much of the research in this area depends on the work of Laurence Ross, who found that figures for dead Scandinavian drivers are incomplete and cannot be reliably interpreted.[31] After studying motor vehicle legislation, sentencing requirements and accident statistics in these countries, Dr. Ross concluded that there was no support for the belief that deterrence of drinking and driving was accomplished by the laws in these countries.[32]

In Sweden, first offenders with a BAC of .15 receive a mandatory prison term, usually one month, and a one year license suspension. Second offenders lose their license permanently.[33] In Finland, the maximum penalty for driving while drunk or under the influence is eight years imprisonment. The most common term is three to six months.

Sweden is now considering amendments to its laws to ease the pressure on the prison system. One third of the 12,000 Swedes imprisoned annually are drunk drivers. There is a waiting list up to a year long, and some convicts are boarded in hotels.[34]

The Scandinavian countries pioneered in the area of drunk driving laws, and Canadian penalties were based on their example. There are limits on how far the Scandinavian experience can be transferred to Canada. Alcholism has been a serious problem in these countries and there is a strong publicly supported temperance movement.[35]

In Sweden, there is a requirement that a person apply for a driver's license after being investigated to ensure that he leads a sober life. Strict laws for impaired drivers were adopted when drivers constituted a minority of the population. Regulation became accepted before mass driving occurred.[36] In Canada, in contrast, we have a highly motorized society and larger distances to travel. There is a very different attitude towards alcoholism. In addition, surveillance is such that there is only a small chance of getting caught.

LEGISLATING SOCIAL CHANGE

The issue of the usefulness of legislative changes to affect drunk driving leads us to the question: To what extent can we legislate social change? Is it not preferable in a democratic society to choose persuasion over coercion? It does not appear that impaired driving will be reduced by merely imposing harsh laws that citizens choose to ignore and the courts hesitate to fully impose.

In addition, is there a political base of support for measures to combat drunk driving? Is the increased activity by pressure groups and the media indicative of widespread support for such measures, or just of a rather vocal group? Remember, there are thousands of Canadians convicted annually for impaired driving. Perhaps this disregard of the law is more indicative of a political base for less stringent laws than for harsher ones.

The issue of drunk driving evades classification by party lines. Perhaps no Canadian government, despite its political stripes, is willing to impose harsher penalties when so many Canadians drink and drive. A good example of a government that is unwilling to prosecute widespread disregard for the law is the Alberta Government's stance regarding unapproved religious schools. There are dozens of illegal privately run religious schools in the province, but the Government hesitates to prosecute them.

There are approximately 150,000 impaired driving charges laid annually in Canada. This figure alone indicates a reason why the federal government might be reluctant to impose tougher laws.[37] Donald Piragoff, a federal policy planner advising Mark MacGuigan stated,

"No matter what people like to think, all the research tells us that simply increasing the penalties for drunk driving isn't going to solve anything."[38]

There is no magic solution to drunk driving. It is a complex problem that is not isolated from other factors. It cannot be resolved by education or law enforcement alone. In 1981, AADAC and the Traffic Injury Research Foundation of Canada held a workshop on Alcohol and Road Accidents. Participants from Canada and abroad who are involved in both research and program applications were invited. There was no agreement among the experts as to what the solution to the problem of impaired driving would be.

It is the opinion of the author that it is a mistake to think that extreme, draconian punishments will solve the problem. As former Solicitor General Graham Harle stated, you could hang drunk drivers and the problem would persist.[39] Harsh punishment is not an effective deterrent because the chance of being caught and punished is slight. There is no guarantee that harsher laws will produce the desired behavioral changes. It is hypocritical of us to selectively punish individuals and condemn them for impaired driving when drinking and driving is so prevalent in Canada. We have to see the double standard that currently exists. Impaired drivers are not a small homogeneous group, but come from all sectors of society. It has not yet become socially unacceptable to drink and drive. How many social events can you think of where people consumed alcohol and then drove home? The image of the criminal impaired driver as a chronic offender and alcoholic is only partly true. Of course there is a core of such offenders, but there is also a constantly changing group of social drinkers who also commit this offense.

Pressure groups that lobby for murder charges to be laid against drunk drivers that accidentally kill someone believe that you make a conscious choice to drink and drive. They believe that people must be made accountable for their actions. Harsher punishment for such offenders may accomplish justice for particular cases. However, it does not appear that harsher laws will act as a significant deterrent. Do people give the question much thought other than when it personally affects them? Rather than censuring people who are convicted of impaired driving, many people really sympathize with them because they realize that it could

just as easily have been themselves who were convicted.

Rather than enacting more stringent laws, perhaps more consistent enforcement of our present laws might act as a greater deterrent. Perhaps it is the likelihood of getting caught, rather than the severity of punishment that is the real deterrent.

We need to start at the community level and realize that we are the problem. Perhaps we are examining the wrong question. Maybe the real problem is the need to reduce alcohol consumption. The Director of the Addiction Research Foundation, David Archibald has stated,

> ...Without exception, nations that have high alcohol consumption levels have the greatest prevalence of alcohol related illness. The more people there are in any society who drink... the greater the incidence of alcohol related damage.[40]

It is really up to Canadians to decide whether to enforce the value that if you drink, don't drive. The question is, do we have the desire and the means to do so?

234. (1) Every one who, while his ability to drive a motor vehicle is impaired by alcohol or a drug, drives a motor vehicle or has the care or control of a motor vehicle, whether it is in motion or not, is guilty of an indictable offence or an offence punishable on summary conviction and is liable

(a) for a first offence, to a fine of not more than two thousand dollars and not less than fifty dollars or to imprisonment for six months or to both;

(b) for a second offence, to imprisonment for not more than one year and not less than fourteen days; and

(c) for each subsequent offence, to imprisonment for not more than two years and not less than three months. 1968-69, c. 38, s. 16; 1974-75-76, c. 93, s. 14(1).

(2) Notwithstanding subsection 662.1(1), where an accused pleads guilty to or is found guilty of an offence under subsection (1), the court before which he appears may, after hearing medical or other evidence, if it considers that the accused is in need of curative treatment in relation to his consumption of alcohol or drugs and that it would not be contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged upon conditions prescribed in a probation order, including a condition respecting his attendance for curative treatment in relation to his consumption of alcohol or drugs, and the provisions of subsections 662.1(2) to (4) apply *mutatis mutandis*. 1974-75-76, c. 93, s. 14(2).

234.1 (1) Where a peace officer reasonably suspects that a person who is driving a motor vehicle or who has the care or control of a motor vehicle, whether it is in motion or not, has alcohol in his body, he may, by demand made to that person, require him to provide forthwith such a sample of his breath as in the opinion of the peace officer is necessary to enable a proper analysis of his breath to be made by means of an approved road-side screening device and, where necessary, to accompany the peace officer for the purpose of enabling such a sample of his breath to be taken.

(2) Every one who, without reasonable excuse, fails or refuses to comply with a demand made to him by a peace officer under subsection (1) is guilty of an indictable offence or an offence punishable on summary conviction and is liable

(a) for a first offence, to a fine of not more than two thousand dollars and not less than fifty dollars or to imprisonment for six months or to both;

(b) for a second offence, to imprisonment for not more than one year and not less than fourteen days; and

(c) for each subsequent offence, to imprisonment for not more than two years and not less than three months.

(3) In proceedings under this section, where it is proved that the accused occupied the seat ordinarily occupied by the driver of a motor vehicle, he shall be deemed to have had the care or control of the vehicle unless he establishes that he did not enter or mount the vehicle for the purpose of setting it in motion.

(4) In this section, "approved road-side screening device" means a device of a kind that is designed to ascertain the presence of alcohol in the blood of a person and that is approved for the purpose of this section by order of the Attorney General of Canada 1974-75-76, c. 93, s. 15.

SAMPLES OF BREATH WHERE REASONABLE BELIEF OF COMMISSION OF OFFENCE UNDER S. 234 OR 236—Failure or refusal to provide sample.

235. (1) Where a peace officer on reasonable and probable grounds believes that a person is committing, or at any time within the preceding two hours has committed, an offence under section 234 or 236, he may, by demand made to that person forthwith or as soon as practicable, require him to provide then or as soon thereafter as is practicable such samples of his breath as in the opinion of a qualified technician referred to in subsection 237(6) are necessary to enable a proper analysis to be made in order to determine the proportion, if any, of alcohol in his blood, and to accompany the peace officer for the purpose of enabling such samples to be taken.

(2) Every one who, without reasonable excuse, fails or refuses to comply with a demand made to him by a peace officer under subsection (1) is guilty of an indictable offence or an offence punishable on summary conviction and is liable

***(a)* for a first offence, to a fine of not more than two thousand dollars and not less than fifty dollars or to imprisonment for six months or to both;**

***(b)* for a second offence, to imprisonment for not more than one year and not less than fourteen days; and**

***(c)* for each subsequent offence, to imprisonment for not more than two years and not less than three months. 1968-69, c. 38, s. 16; 1974-75-76, c. 93, s. 16.**

DRIVING WITH MORE THAN 80 MGS. OF ALCOHOL IN BLOOD — Conditional and absolute discharge.

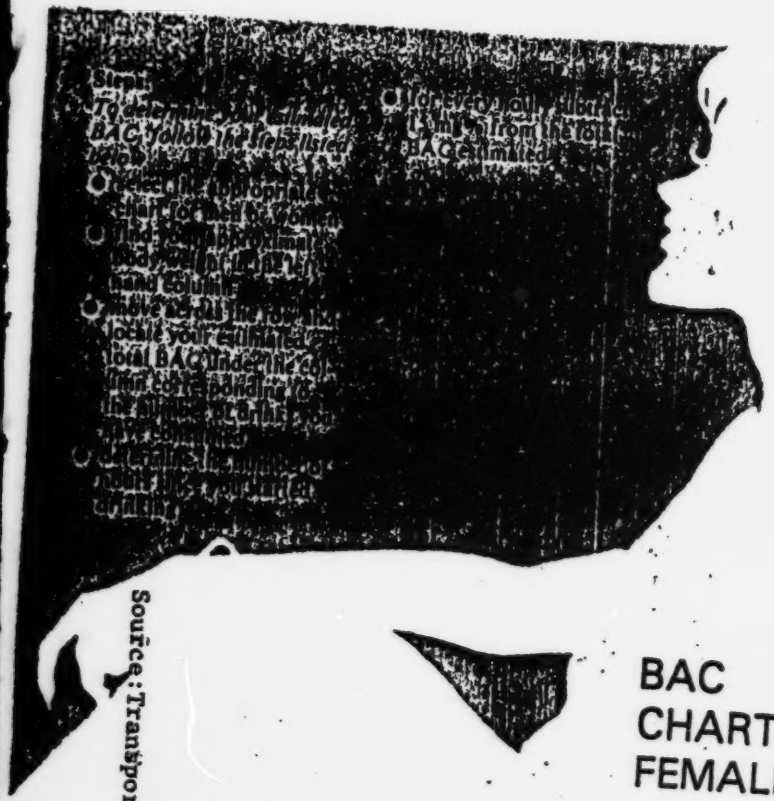
236. (1) Every one who drives a motor vehicle or has the care or control of a motor vehicle, whether it is in motion or not, having consumed alcohol in such a quantity that the proportion thereof in his blood exceeds 80 milligrams of alcohol in 100 millilitres of blood, is guilty of an indictable offence or an offence punishable on summary conviction and is liable

***(a)* for a first offence, to a fine of not more than two thousand dollars and not less than fifty dollars or to imprisonment for six months or to both;**

***(b)* for a second offence, to imprisonment for not more than one year and not less than fourteen days; and**

***(c)* for each subsequent offence, to imprisonment for not more than two years and not less than three months.**

(2) Notwithstanding subsection 662.1 (1), where an accused pleads guilty to or is found guilty of an offence under subsection (1), the court before which he appears may, after hearing medical or other evidence, if it considers that the accused is in need of curative treatment in relation to his consumption of alcohol and that it would not be contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged upon conditions prescribed in a probation order, including a condition respecting his attendance for curative treatment in relation to his consumption of alcohol, and the provisions of subsections 662.1(2) to (4) apply *mutatis mutandis*. 1959, c. 41, s. 15; 1968-69, c. 38, s. 16; 1974-75-76, c. 93, s. 17.



Example:
Calculate the BAC of a 150-lb. man who has had 4 drinks in 2 hours. From the chart, a BAC of 116 mg% is observed in the row labelled 150-lbs. under drink column 4. From this figure of 116 subtract 30 mg% for the two-hour elimination period. This gives us a BAC of 116 minus 30 (86 mg%).

If you weigh more than your ideal weight, the difference may be due to the fact that you have more fatty tissue. Consequently, your BAC will be higher and the impairing effects of alcohol will be greater.

By calculating your BAC from the number of drinks you've had over a period of time, you can make a rough estimate of your level of impairment. This will give you an idea of how long it takes for the alcohol to leave your body.

There is no safe limit for drinking before driving. Impairment can occur at levels below 80 mg%. However, you reduce the risk of being involved in an accident by practising moderation.

BAC CHART FOR FEMALES

Ideal Body Weight (Lbs.)	No. of Drinks 1	2	3	4	5	6	7	8	9	10
100	50	101	152	203	253	304	355	406	456	507
125	40	80	120	162	202	244	282	324	364	404
150	34	68	101	135	169	203	237	271	304	338
175	29	58	87	117	146	175	204	233	262	292
200	26	50	76	101	126	152	177	203	227	253
225	22	45	68	91	113	136	159	182	204	227
250	20	41	61	82	101	122	142	162	182	202

1 drink – 1½ volume oz. of rum, rye, scotch, brandy, gin, vodka, etc.
– 1 12 oz. bottle of normal strength beer.
– 3 oz. of fortified wine.
– 5 oz. of table wine.

BAC CHART FOR MALES

Estimated BAC in mg% by number of drinks in relation to body weight.

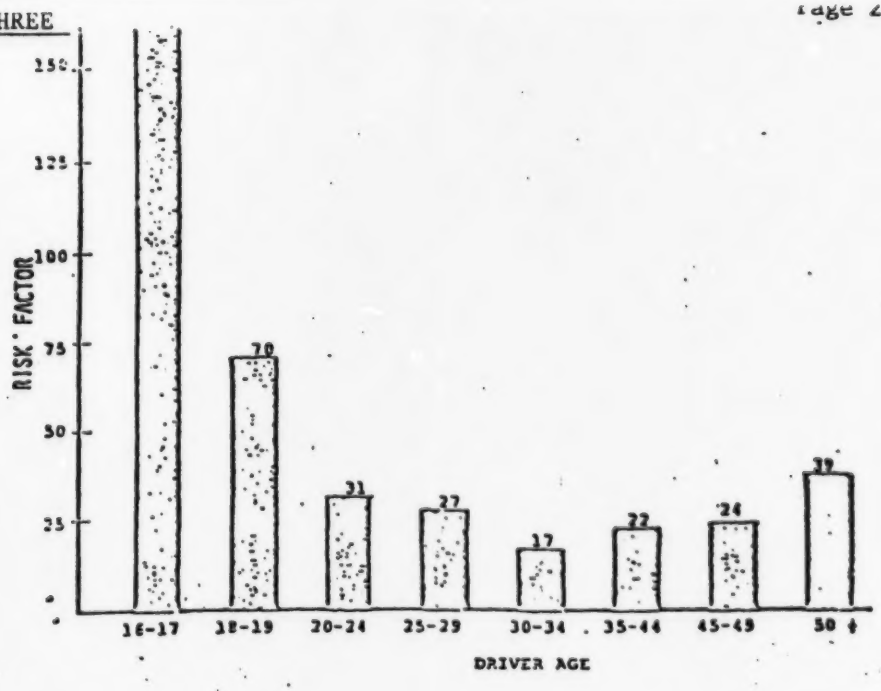
Ideal Body Weight (Lbs.)	No. of Drinks 1	2	3	4	5	6	7	8	9	10
100	43	87	130	174	217	261	304	348	391	435
125	34	69	103	139	173	209	242	278	312	346
150	29	58	87	116	145	174	203	232	261	290
175	25	50	75	100	125	150	175	200	225	250
200	22	43	65	87	108	130	152	174	195	217
225	19	39	58	78	97	117	136	156	175	195
250	17	35	52	70	87	105	122	139	156	173

Hours since first drink – 1 2 3 4 5 6
Subtract from BAC – 15 30 45 60 75 90

Adapted from the Canada Safety Council Blood – Alcohol Chart.

Source: Transport Canada, Smashed The Magazine On Drinking-and-Driving, pp. 24-5.

APPENDIX THREE



Source: Traffic Injury Research Foundation of Canada, Alcohol and Traffic Safety: Strategies and Priorities For The Future, 1982, p. 89.

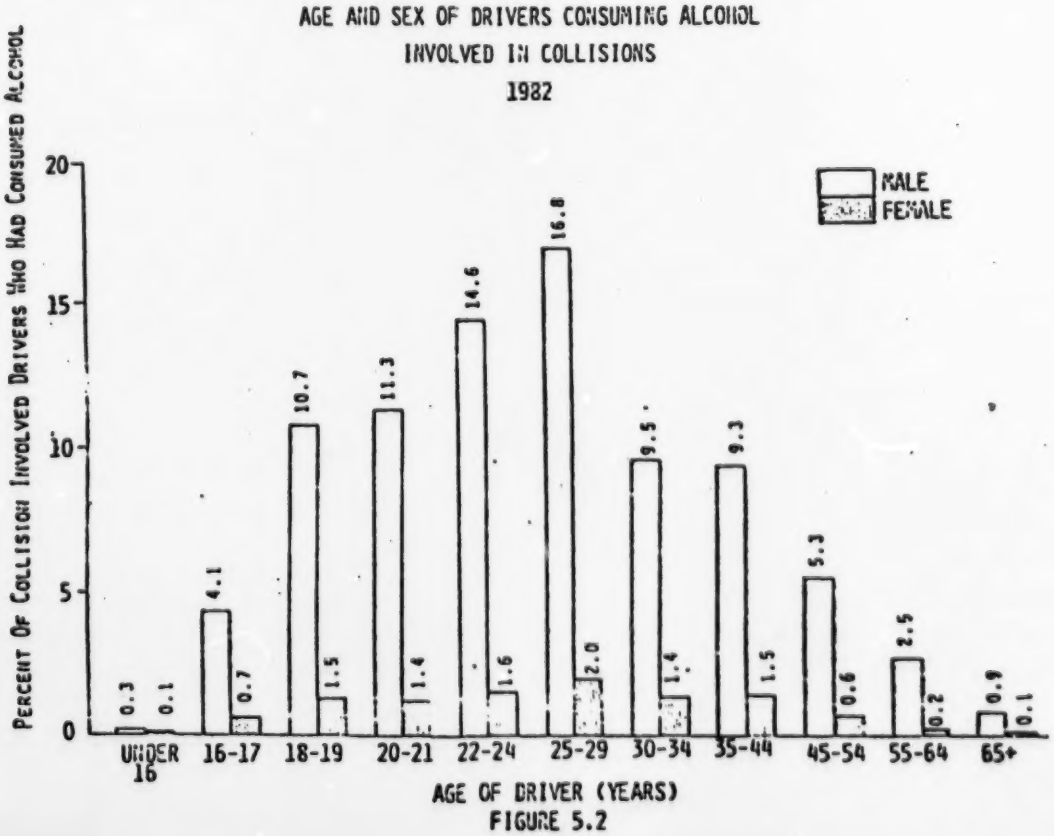


FIGURE 5.2

Source: Alberta Collision Statistics 1982, Alberta Transportation.

PERSONS[1] CHARGED WITH ALCOHOL-RELATED TRAFFIC OFFENCES BY SEX, CANADA AND PROVINCES, 1975 TO 1980

Fail or Refuse to Provide a Sample of Breath

Province	Male (%)						Female (%)						Total Number					
	1975	1976	1977	1978	1979	1980	1975	1976	1977	1978	1979	1980	1975	1976	1977	1978	1979	1980
Nfld.	99	99	98	98	98	97	1	1	2	2	2	3	514	495	606	631	725	680
P.E.I.	98	97	98	96	96	97	2	3	2	4	4	3	448	492	548	582	583	478
N.S.	98	98	98	97	96	96	2	2	2	3	4	4	1,267	1,533	1,807	2,160	2,575	2,478
N.B.	99	99	98	97	97	97	1	1	2	3	3	3	1,213	1,248	1,479	1,472	1,734	1,681
Que.	98	97	96	96	97	96	2	3	4	4	3	4	1,041	738	780	686	781	746
Ont.	97	96	96	94	94	93	3	4	4	6	6	7	2,851	2,837	2,740	2,841	2,685	2,572
Man.	96	95	95	95	92	90	4	5	5	5	8	10	751	688	802	851	860	802
Sask.	97	94	93	92	93	92	3	6	7	8	7	8	1,498	1,589	1,695	1,607	1,339	1,206
Alta.	97	96	94	98	96	95	3	4	6	2	4	5	1,212	1,231	1,091	804	771	734
B.C.	94	93	94	94	94	92	6	7	6	6	6	8	1,270	1,295	1,060	391	268	434
Yukon	88	95	96	90	86	89	12	5	4	10	14	11	61	42	73	31	42	37
N.W.T.	98	97	95	92	95	97	2	3	5	8	5	3	55	59	56	62	57	62
Canada	97	96	96	95	95	95	3	4	4	5	5	5	12,181	12,247	12,687	12,118	12,420	11,916

Driving While Impaired

Province	Male (%)						Female (%)						Total Number					
	1975	1976	1977	1978	1979	1980	1975	1976	1977	1978	1979	1980	1975	1976	1977	1978	1979	1980
Nfld.	99	98	98	98	98	98	1	2	2	2	2	2	3,504	3,229	3,507	3,156	3,558	3,275
P.E.I.	96	97	96	97	97	97	4	3	4	3	3	3	994	746	780	1,052	1,186	986
N.S.	98	98	98	97	96	96	2	2	2	3	4	4	4,406	3,847	4,076	3,995	3,937	4,017
N.B.	99	98	98	97	97	97	1	2	2	3	3	3	3,428	3,218	3,380	3,546	3,869	3,330
Que.	99	98	97	97	97	97	2	2	3	3	3	3	27,434	27,926	26,112	24,709	28,731	29,048
Ont.	96	96	95	95	95	94	4	4	5	5	5	6	40,931	40,052	41,675	42,124	41,005	43,198
Man.	96	95	95	94	93	92	4	5	5	6	7	8	5,368	5,582	7,361	7,972	7,117	6,336
Sask.	95	94	94	93	93	92	5	6	6	7	7	8	7,684	7,856	8,185	8,334	10,110	9,800
Alta.	96	95	95	94	94	94	4	5	5	6	6	6	12,900	14,494	18,139	20,655	21,775	22,472
B.C.	95	94	93	93	93	92	5	6	7	7	7	8	22,849	22,927	21,788	20,993	20,572	22,160
Yukon	94	96	93	93	91	91	6	4	7	7	9	9	458	452	418	411	382	453
N.W.T.	96	95	94	93	94	94	4	5	6	7	6	6	812	669	716	667	603	551
Canada	96	96	95	95	95	94	4	4	5	5	5	6	130,856	130,998	136,137	137,620	142,840	145,576

[1] "Total persons charged" does not represent an unduplicated count of individuals during the year, as a person is counted on each occasion that s/he has been charged with having committed an offence.

Source: Statistics Canada, Crime and Traffic Enforcement Statistics 1975, 1976, 1977, 1978, 1979 and 1980 (Ottawa: Statistics Canada Catalogue No. 85-205, 1977, 1978, 1979, 1980, 1981 and 1982 respectively).

FOOTNOTES

[1]A.C. Donelson and R.A. Warren, Alcohol and Traffic Safety: Strategies and Priorities for the Future Final Report (Ottawa, TIRF, 1982), pp. 192-4.

[2]"Drunk Driving. It's Time to Blow the Whistle", Viewpoint, January 1983, p. 1.

[3]Donelson and Warren, Alcohol and Traffic Safety, p. 192.

[4]Alberta Transportation, Alberta Collision Statistics 1982, p. 85.

[5]John Tomerlin, "And One More for the Road", Road and Track, February 1983, pp. 108-115.

[6]Ross Laver, "Why are Courts Soft on Drunk Drivers?", The Globe and Mail, December 10, 1983, p.21.

[7]Traffic Injury Research Foundation of Canada, Alcohol and Road Accidents Future Strategies and Priorities (Ottawa: TIRF, 1983), p. 15.

[8]Reg Warren, Impaired Driving Technical Report Series No. 8 (Ottawa: Department of National Health and Welfare Research Bureau,1978), pp. 15-17.

[9]TIRF, Alcohol and Road Accidents, p. 19.

[10]John Tomerlin, "And One More For the Road", P. 110.

[11]Donelson and Warren, Alcohol and Traffic Safety, p. 81.

[12]Reg Warren, Impaired Driving, p. 6.

[13]Sandra Edelman and David Walker, Impaired Driving: A Critical Review of the Research Literature (Vancouver: Ministry of the Attorney General, 1977), p. 62.

[14]Donelson and Warren, Alcohol and Traffic Safety, p. 88.

[15]Alberta Transportation, Alberta Collision Statistics 1982, p. 89.

[16]Presidential Commission on Drunk Driving, An Interim Report to the Nation From the Presidential Commission on Drunk Driving(Washington, D.C.: Presidential Commission on Drunk Driving, 1982), p. 53.

[17]Department of Transportation National Highway Traffic Safety Administration, 23 CFR PART 1209 Incentive Grant Criteria for Alcohol Traffic Safety Programs, p. 13.

[18]Statement of William N. Plymat, Sr. before the Federal and

State Affairs Committee of the Kansas House of Representatives, Topeka, Kansas, February 14, 1983, p. 13.

[19]Statement of William N. Plymat, Sr., February 14, 1983, p.13.

[20]Edelman and Walker, Impaired Driving, p. 65.

[21]Edelman and Walker, Impaired Driving, p. 66.

[22]Richard Gilbert, "The Drinking Age Debate", The Journal , September 1, 1983.

[23]Gilbert, "The Drinking Age Debate".

[24]Donelson and Warren, Alcohol and Traffic Safety, pp. 81-6.

[25]Alberta Collision Statistics 1982, p. 88.

[26]Edelman and Walker, Impaired Driving, p. 62.

[27]Law Reform Commission of Canada, Report #21 Investigative Tests Alcohol, Drugs and Driving Offenses(Ottawa: Law Reform Commission of Canada, 1983), p.20.

[28]Law Reform Commission of Canada, Report #21 Investigative Tests, p.20.

[29]John Tomerlin, "And One More For The Road", p. 110.

[30]Ross Laver, "Why are Courts Soft on Drunk Drivers?", The Globe and Mail, December 10, 1983, p. 1.

[31]Edelman and Walker, Impaired Driving, p. 96.

[32]John Tomerlin, "And One More For the Road", p. 111.

[33]John Tomerlin, "And One More For the Road", p. 111.

[34]Ross Laver, "Why Are Courts Soft on Drunk Drivers?", The Globe and Mail , December 10, 1983, p. 21.

[35]Edelman and Walker, Impaired Driving, p. 97.

[36]Edelman and Walker, Impaired Driving, p. 97.

[37]Ross Laver, "Why Are Courts Soft on Drunk Drivers?", p. 21.

[38]Ross Laver, "Why are Courts Soft on Drunk Drivers?", p. 1.

[39]"I Think We Could Hang Impaired Drivers and it Wouldn't Stop Impaired Driving", Alberta Doctor's Digest , July /August 1983.

[40]Quote by David Archibald, Director of the Addiction Research Foundation, The Vital Need to Reduce Consumption, 1973.

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